

U.S. GOVERNMENT  
LEASE FOR REAL PROPERTY

DATE OF LEASE February 1, 2002 *JB* *x*

LEASE NO. **GS-11B-01477**

THIS LEASE, made and entered into this date by and between

**JBG/SEFC VENTURE, L.L.C., a Delaware limited liability company**

whose address is **c/o The JBG Companies**

(b) (6)

hereinafter called the **Lessor**, and the **UNITED STATES OF AMERICA**, hereinafter called the **Government**:

WITNESSETH: The parties hereto for the consideration hereinafter mentioned, covenant and agree as follows:

1. The Lessor hereby leases to the Government the following described premises:

**[See Section 2.1 of this Lease]**

to be used for such purposes as determined by the Government.

2. TO HAVE AND TO HOLD the said premises with their appurtenances for the firm term beginning on **[See Section 2.2 of this Lease]** through **[See Section 2.2 of this Lease]**, subject to termination and renewal rights as may be hereinafter set forth.

3. The Government shall pay the Lessor annual rent of **\$(See Sections 3.1 and 2.1.2 of this Lease)** at the rate of **\$(See Section 3.1 of this Lease)** per month in arrears. In the event the term of the Lease starts on a day other than the first day of a month, the rent for the first and last months of the lease term shall be prorated. Rent shall be payable to: **[See Section 3.4.2 of this Lease.]**

4. The Government may terminate this Lease pursuant to Section 5.1.5 if the Lessor fails to timely provide the Government with the evidence of capability to perform set forth in Section 5.1.2 or fails to satisfy the other obligations set forth in Section 5.1. of this Lease, as such time frame may be extended by the Government in its sole discretion, or may terminate this Lease pursuant to Section 5.7.11 in case of failure on the part of the Lessor to commence, diligently pursue and/or complete the work within the time fixed in the Project Schedule, other than as a result of Excusable Delay or Government Delay (or make arrangements for the same which are satisfactory to the Government). Once such financing has been obtained and such other obligations have been satisfied and once all or any portion of the Leased Premises has been Substantially Completed by the Lessor and has been accepted by the Government, the Government shall have no right to terminate the Space Lease portion of this Lease except as expressly set forth herein. The foregoing shall not diminish or affect any other rights or remedies held by the Government and described herein.

5. This Lease may be renewed at the option of the Government, for the following terms and at the following rentals:

**[See Section 2.3 of this Lease]**

provided notice be given in writing to the Lessor at least **[See Section 2.3.3 of this Lease]** days before the end of the original lease term or applicable renewal term; all other terms and conditions of this Lease shall remain the same during any renewal term. Said notice shall be computed commencing with the day after the date of mailing.

*[Signature]*  
Landlord/Tenant

6. The Lessor shall furnish to the Government, as part of the rental consideration, the following:

- (i) the obligations of the Lessor with respect to the Space Lease and the Service Agreement (as defined in this Lease);
- (ii) the design and construction of the Base Building (as described and defined in this Lease);
- (iii) a Fit-Out Allowance (as defined in this Lease ) equal to Twenty Million Eight Hundred Thousand and No/100 Dollars (\$20,800,000.00) to be used and applied as directed by the Government to pay for the cost of the design and construction of the Fit-Out (as described and defined in this Lease); and
- (iv) 145 reserved parking spaces in the parking structures to be constructed by Lessor as part of the Facility (as further described and defined in this Lease); and
- (v) the other obligations of the Lessor pursuant to the Lease Agreement attached to this Standard Form 2 and incorporated herein by this reference.

7. The following are attached and made a part hereof:

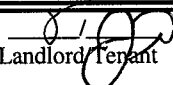
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Lease Agreement, Lease No. GS-11B-01477, pages 1 - 292	
Schedule 2.1.a	Legal Description of Site (2 pages)
Schedule 2.5.4	Construction Estimate – Quantities (1 page)
Schedule 2.5.5	Construction Estimate – Summary (5 pages)
Schedule 2.5.6	Construction Estimate Narrative (3 pages)
Schedule 2.5.7	Uses of Funds/Total Project Costs (2 pages)
Schedule 2.5.9	Developer's Fee (1 page)
Schedule 2.5.10	Architect's Fee (1 page)
Schedule 2.5.11	Architect's Subcontractors (1 page)
Schedule 2.7.1	GSA Form 1217 (1 page)
Schedule 2.17.a	Environmental Mitigation Measures (24 pages)
Schedule 5.1.2	Development Team Personnel (2 pages)
Schedule 5.1.4(a)	Preliminary Equity Draw Schedule (1 page)
Schedule 5.4.5	Project Schedule (Required Delivery Dates) (7 pages)
Schedule 5.5.1.a	Site Plan (1 page)
Schedule 5.5.1.b	Building Elevations (4 pages)
Schedule 5.5.1.c	Building Sections (1 page)
Schedule 5.5.1.d	Typical Floor Lay Out (1 page)
Schedule 5.5.1.e	Typical Floor Plan (1 page)
Schedule 5.5.1.f	Massing Model (1 page)
Schedule 5.5.1.g	Floor Plate Concept (4 pages)
Schedule 5.5.1.h	Approach to the Project (9 pages)
Schedule 6.2	Preliminary O&M Plan (47 pages)
Schedule 8.7.28	Blast/Special Security Firm and Lead Engineer Requirements (9 pages)
Schedule 9.38	Lessor's Small Business, Small Disadvantaged Business and Small Women-Owned Business Subcontracting Plan (6 pages)
Schedule 10.1.a	Financial Statements of Funding Sources (8 pages)
Schedule 10.1.b	Representations and Certifications (GSA Form 3518) (4 pages)

In no event will information within any Schedule indicate in any way the cost assignment between Base Building and Fit-Out or whether any particular items shall be treated as Base Building or Fit-Out for the purposes of this Lease.

8. The following changes were made in this lease prior to its execution:

N/A

  
 Landlord/Tenant

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names as of the date first above written.

LESSOR:

JBG/SEFC VENTURE, L.L.C.

BY: JBG/SEFC Partners, L.L.C., its sole managing member

BY: (b) (6)  
NAME: Benjamin R. Jacobs

TITLE:

IN PRESENCE OF:

NAME: Robert A. Stewart

ADDRESS: \_\_\_\_\_

UNITED STATES OF AMERICA, by the GENERAL SERVICES ADMINISTRATION

BY: (b) (6)  
NAME: JOEL BERELSON

OFFICIAL TITLE: Contracting Officer

STANDARD FORM 2  
FEBRUARY 1965 EDITION

Landlord/Tenant

Schedule 10.1.5

# & Representations and Certifications (GSA Form 3518)

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**REPRESENTATIONS AND CERTIFICATIONS**

(Acquisition of Leasehold Interests in Real Property)

Solicitation Number

SFO-99-016

Dated

February 1, 2002

Complete appropriate boxes, sign the form, and attach to offer.

The Offeror makes the following Representations and Certifications. NOTE: The "Offeror," as used on this form, is the owner of the property offered, not an individual or agent representing the owner.

**1. 52.219-1 - SMALL BUSINESS PROGRAM REPRESENTATIONS (MAY 2001)**

- (a) (1) The North American Industry Classification System code for this acquisition is 531190.  
 (2) The small business size standard applicable to this acquisition is average annual gross revenues of \$15 million or less for the preceding three fiscal years.  
 (3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

**(b) Representations.**

- (1) The Offeror represents as part of its offer that it ☐ is, ☒ is not a small business concern.  
 (2) (Complete only if offeror represented itself as a small business concern in paragraph (b)(1) of this provision.) The Offeror represents, for general statistical purposes, that it ☐ is, ☒ is not a small disadvantaged business concern as defined in 13 CFR 124.1002.  
 (3) (Complete only if offeror represented itself as a small business concern in paragraph (b)(1) of this provision.) The Offeror represents as part of its offer that it ☐ is, ☐ is not a women-owned small business concern.  
 (4) [Complete only if offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The offeror represents, as part of its offer, that it ☐ is, ☐ is not a veteran-owned small business concern.  
 (5) [Complete only if offeror represented itself as a small business concern in paragraph (b)(4) of this provision.] The offeror represents, as part of its offer, that it ☐ is, ☐ is not a service-disabled veteran-owned small business concern.

**(c) Definitions. As used in this provision--**

"Service-disabled veteran-owned small business concern"--

- (1) Means a small business concern--  
 (i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and  
 (ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.  
 (2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

"Small business concern" means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (a) of this provision.

"Veteran-owned small business concern" means a small business concern--

- (1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and  
 (2) The management and daily business operations of which are controlled by one or more veterans.

"Women-owned small business concern" means a small business concern--

- (1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and  
 (2) Whose management and daily business operations are controlled by one or more women.

**(d) Notice.**

- (1) If this solicitation is for supplies and has been set aside, in whole or in part, for small business concerns, then the clause in this solicitation providing notice of the set-aside contains restrictions on the source of the end items to be furnished.  
 (2) Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a small, HUBZone small, small disadvantaged, or women-owned small business concern in order to obtain a contract to be awarded under the preference programs established pursuant to section 8(a), 8(d), 9, or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall--

- (i) Be punished by imposition of fine, imprisonment, or both;

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- (ii) Be subject to administrative remedies, including suspension and debarment; and
- (iii) Be ineligible for participation in programs conducted under the authority of the Act.

2. 52.204-5 - WOMEN-OWNED BUSINESS (OTHER THAN SMALL BUSINESS) (MAY 1999)

- (a) *Definition.* "Women-owned business concern," as used in this provision, means a concern which is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women.
- (b) *Representation.* [Complete only if the offeror is a women-owned business concern and has not represented itself as a small business concern in paragraph (b)(1) of FAR 52.219-1, Small Business Program Representations, of this solicitation.] The offeror represents that it [ ] is a women-owned business concern..

3. 52.222-22 - PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (FEB 1999)

The Offeror represents that --

- (a) It [☒] has, [ ] has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation;
- (b) It [☒] has, [ ] has not filed all required compliance reports; and
- (c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards. (Approved by OMB under Control Number 1215-0072.)

4. 52.222-25 - AFFIRMATIVE ACTION COMPLIANCE (APR 1984)

The Offeror represents that --

- (a) It [☒] has developed and has on file, [ ] has not developed and does not have on file, at each establishment affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), or
- (b) It [ ] has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor. (Approved by OMB under Control Number 1215-0072.)

5. 52.203-02 - CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (APR 1985)

(Applies to leases which exceed \$100,000 average net annual rental, including option periods.)

(a) The Offeror certifies that--

- (1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other Offeror or competitor relating to (i) those prices, (ii) the intention to submit an offer, or (iii) the methods or factors used to calculate the prices offered;
- (2) The prices in this offer have not been and will not be knowingly disclosed by the Offeror, directly or indirectly, to any other Offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and
- (3) No attempt has been made or will be made by the Offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory--

- (1) Is the person in the Offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or
- (2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above Benjamin R. Jacobs, President [insert full name of person(s) in the Offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the Offeror's organization];
- (ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and
- (iii) As an agent, has not personally participated, and will not participate, in action contrary to subparagraphs (a)(1) through (a)(3) above.

(c) If the Offeror deletes or modifies subparagraph (a)(2) above, the Offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

6. 52.203-11 - CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (APR 1991)

(Applies to leases which exceed \$100,000.)

- (a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, are hereby incorporated by reference in paragraph (b) of this certification.

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- (b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989,--
- (1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of a contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
  - (2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and
  - (3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.
- (c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

7. 52.209-5 - CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS (MAR 1996)

(Applies to leases which exceed \$100,000 average net annual rental, including option periods.)

- (a) (1) The Offeror certifies, to the best of its knowledge and belief, that--
- (i) The Offeror and/or any of its Principals--
    - (A) Are ☐ are not ☒ presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;
    - (B) Have ☐ have not ☒, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and
    - (C) Are ☐ are not ☒ presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(1)(i)(B) of this provision.
  - (ii) The Offeror has ☐ has not ☒, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.
- (2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER SECTION 1001, TITLE 18, UNITED STATES CODE.

- (b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.
- (d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- (e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

8. 52.204-3 - TAXPAYER IDENTIFICATION (OCT 1998)

- (a) *Definitions.*

"Common parent," as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member.

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"Taxpayer Identification Number (TIN)," as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

- (b) All offerors must submit the information required in paragraphs (d) through (f) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the IRS. If the resulting contract is subject to the payment reporting requirements described in Federal Acquisition Regulation (FAR) 4.904, the failure or refusal by the offeror to furnish the information may result in a 31 percent reduction of payments otherwise due under the contract.
- (c) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.
- (d) *Taxpayer Identification Number (TIN).*

- \* TIN: \_\_\_\_\_
- \* ☒ TIN has been applied for.
- \* TIN is not required because:
- \* Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;
- \* Offeror is an agency or instrumentality of a foreign government;
- \* Offeror is an agency or instrumentality of the Federal government;

- (e) *Type of organization.*

- \* Sole proprietorship;
- \* Partnership;
- \* Corporate entity (not tax-exempt);
- \* Corporate entity (tax-exempt);
- \* Government entity (Federal, State, or local);
- \* Foreign government;
- \* International organization per 26 CFR 1.6049-4;
- \* ☒ Other Limited Liability Company.

- (f) *Common Parent.*

- \* Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this provision.
- \* Name and TIN of common parent:

Name \_\_\_\_\_  
TIN \_\_\_\_\_

9. OFFEROR'S DUNS NUMBER (APR 1996)

Enter number, if known: \_\_\_\_\_

OFFEROR OR AUTHORIZED REPRESENTATIVE	Name and Address (Including ZIP Code)	Telephone Number
	Benjamin R. Jacobs, President JBG/SEFC Venture, LLC C/o The JBG Companies 5301 Wisconsin Avenue, N.W. Suite 300 Washington, DC 20015	202-777-7123
	(b) (6)	
	Signature	Date February 1, 2002

INITIALS:   *Y*   &   *g*    
LESSOR GOVERNMENT

LEASE AGREEMENT

[GSA STANDARD FORM SF-2 PRECEDES THIS PAGE AND IS A PART OF THE LEASE]

**LEASE NO. GS-11B-01477**

Between

JBG/SEFC VENTURE, L.L.C.,

Lessor

and

UNITED STATES OF AMERICA,

by and through the General Services Administration,

on behalf of the U.S. Department of Transportation

Tenant

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## ARTICLE IX.

### GENERAL LEASE CLAUSES

**9.1. Subletting and Assignment.** The Government may sublet all or a part of the Leased Premises or assign this Lease without obtaining the consent of the Lessor provided that (i) the Government provides the Lessor with written Notice of such subletting or assignment at least fifteen (15) working days prior to the effective date of such subletting or assignment, (ii) the Government remains liable for all of the obligations of the tenant under the Lease, and (iii) the full faith and credit of the Government serves as a guaranty of the obligations of the tenant under this Lease in the event of such subletting or assignment.

**9.2. Successors Bound.** This Lease shall bind, and inure to the benefit of, the parties and their respective heirs, executors, administrators, successors, and assigns.

**9.3. Subordination, Nondisturbance and Attornment.**

(a) Lessor warrants that it holds such title to or other interest in the Leased Premises and other property as is necessary for the Government's access to the Leased Premises and full use and enjoyment thereof in accordance with the provisions of this Lease. The Government agrees, in consideration of the warranties and conditions set forth in this Section, that this Lease is subject and subordinate to any and all recorded mortgages, deeds of trust and other liens now or hereafter existing or imposed upon the Leased Premises, and to any renewal, modification or extension thereof. It is the intention of the parties that this provision shall be self-operative and that no further instrument shall be required to effect the present or subsequent subordination of this Lease. The Government agrees, however, within twenty (20) business days next following the Contracting Officer's receipt of a written demand, to execute such instruments as Lessor may reasonably request to evidence further the subordination of this Lease to any existing or future mortgage, deed of trust or other security interest pertaining to the Leased Premises, and to any water, sewer or access easement necessary or desirable to serve the Leased Premises or adjoining property owned in whole or in part by Lessor if such easement does not interfere with the full enjoyment of any right granted the Government under this Lease.

(b) No such subordination, to either existing or future mortgages, deeds of trust or other lien or security instrument shall operate to affect adversely any right of the Government under this Lease so long as the Government is not in default under this Lease. Lessor will include in any future mortgage, deed of trust or other security instrument to which this Lease becomes subordinate, or in a separate nondisturbance agreement, a provision to the foregoing effect. Lessor warrants that the holders of all notes or other obligations secured by existing mortgages, deeds of trust or other security instruments have consented to the provisions of this Section, and agrees to provide true copies of all such consents to the Contracting Officer promptly upon demand.

(c) In the event of any sale of the Leased Premises or any portion thereof by foreclosure of the lien of any such mortgage, deed of trust or other security instrument, or the giving of a deed in lieu of foreclosure, the Government will be deemed to have attorned to any purchaser, purchasers, transferee or transferees of the Leased Premises or any portion thereof and its or their successors and assigns, and any such purchasers and transferees will be deemed to have assumed all obligations of the Lessor under this Lease, so as to establish direct privity of estate and contract between Government and such purchasers or transferees, with the same force, effect and relative priority in time and right as if this Lease had initially been entered into between such purchasers or transferees and the Government; provided, further, that the Contracting Officer and such purchasers or transferees shall, with reasonable promptness following any such sale or deed delivery in lieu of foreclosure, execute all such revisions to this Lease, or other writings, as shall be necessary to document the foregoing relationship.

(d) None of the foregoing provisions may be deemed or construed to imply a waiver of the Government's rights as a sovereign.

#### **9.4. Statement of Lease.**

(a) The Contracting Officer will, within thirty (30) days next following the Contracting Officer's receipt of a joint written request from Lessor and a prospective lender or purchaser of the Building, execute and deliver to Lessor a letter stating that the same is issued subject to the conditions stated in this Section and, if such is the case, that (i) the Lease is in full force and effect; (ii) the date to which the Rent and other charges have been paid in advance, if any; and (iii) whether any Notice of default has been issued.

(b) Letters issued pursuant to this Section are subject to the following conditions:

(1) That they are based solely upon a reasonably diligent review of the Contracting Officer's Lease file as of the date of issuance;

(2) That the Government shall not be held liable because of any defect in or condition of the Leased Premises or Building, unless otherwise liable under the terms of this Lease;

(3) That the Contracting Officer does not warrant or represent that the Leased Premises or Building comply with applicable Federal, State and local law; and

(4) That the Lessor and each prospective lender and purchaser are deemed to have constructive notice of such facts as would be ascertainable by reasonable prepurchase and precommitment inspection of the Leased Premises and Building and by inquiry to appropriate Federal, State and local government officials.

**9.5. Substitution of Tenant Agency.** The Government may, at any time and from time to time, substitute any Government agency or agencies for the Government agency or agencies, if any, named in the Lease.

**9.6. No Waiver.** No failure by either party to insist upon the strict performance of any provision of this Lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial Rent or other performance by either party during the continuance of any such breach shall constitute a waiver of any such breach of such provision.

**9.7. Integrated Agreement.** This Lease, upon execution, contains the entire agreement of the parties and no prior written or oral agreement, express or implied, shall be admissible to contradict the provisions of the Lease.

**9.8. Mutuality of Obligation.** The obligation of the Lessor to furnish services, utilities, maintenance and non-capital repairs and replacements pursuant to the Service Agreement portion of this Lease, and the obligation of the Government to pay the Service Agreement Rent, are interdependent.

**9.9. Notice and Cure.**

(a) All Notices or communications required to be given herein or which either party desires to give to the other shall be in writing and shall be deemed sufficiently given if addressed to the respective party at the address noted below:

(1) if to the Lessor, at the following address or any other address designated by the Lessor in writing:

c/o The JBG Companies  
5301 Wisconsin Avenue, N.W.  
Suite 355  
Washington, D.C. 20036  
Attn: Benjamin R. Jacobs

with a copy to:

JER Partners  
1650 Tysons Boulevard  
Suite 1600  
McLean, VA 22102  
Attn: Legal Counsel

(2) if to the Government or the Contracting Officer at the following address or any other address designated by the Government in writing:

General Services Administration  
National Capital Region  
7th & D Streets, S.W.  
Washington, D.C. 20407  
Attn: Mr. Joel Berelson, Contracting Officer

(b) Except as described in the last sentence of this paragraph 9.9(b), the Government will not exercise any rights to offset Rent pursuant to the provisions of this Lease or otherwise or exercise any other remedy it may have as a result of the non-performance or failure of the Lessor to comply with the terms and conditions of this Lease, until it has provided prior written Notice to Lessor and Lessor's Lender, or the Master Servicer (provided that they have given written notice of their identity and address to the Government and provided that the Government will in no case provide notice to a total of more than four parties), and any applicable cure period hereunder has expired (it being agreed that, in the absence of a specified cure period for a default, such cure period shall be deemed to be ten (10) days). Notwithstanding the provisions of this paragraph or of any other portion of this Lease, the Government will have the right to perform any emergency repairs or services in the event of non-performance or failure by the Lessor and offset the cost thereof against the Service Agreement Rent payable hereunder.

**9.10. Further Assurances.** The Government will cooperate with the Lessor and the Lessor's Lender to make such clarifications to this Lease as may be required to facilitate the Project financing to the extent such requested clarifications do not alter the Lessor's or the Government's rights or obligations, do not increase the costs to the Government and are otherwise consistent with the purpose and intent of this Lease as reasonably determined by the Government.

**9.11. Delivery, Inspection and Acceptance.**

(a) The Government reserves the right to determine whether the Premises or any portion thereof tendered to the Government is or is not Substantially Complete.

(b) Except as expressly set forth to the contrary elsewhere in this Lease, the following provisions shall apply: If, after acceptance of any portion of the Leased Premises, such portion of the Leased Premises does not in every material respect comply with the provisions of this Lease (even though the same may be Substantially Complete), the Contracting Officer may elect in his discretion to withhold an amount from the Service Agreement Rent equal to the Government's cost (including all administrative overhead), as estimated by the Contracting Officer or his designee, to correct or complete such portion of the Leased Premises so as to bring it into complete compliance with Lease requirements. If the Contracting Officer elects to withhold Service Agreement Rent, pursuant to this Section, the Contracting Officer shall deliver to the Lessor within ten (10) business days following completion of the Government's inspection of such portion of the Leased Premises, a Notice specifying (i) the defects and omissions noted during such inspection, (ii) the Government's estimate of the costs (including all administrative overhead) to the Government of correcting or completing same, and (iii) a date by which Lessor shall so correct or complete, which date shall afford Lessor a reasonable time to complete the Work or cure the defect or omission. Should the Lessor complete or correct all such defects and omissions by or before the required correction date, the Contracting Officer will authorize payment to the Lessor of the withheld amount, without interest, within forty-five (45) days of the Government's acceptance of the work. If the Lessor fails to complete or correct all such defects and omissions by or before the required correction date, the Government shall be entitled to all rights and remedies reserved

pursuant to Section 9.16. This Section 9.11(b) shall not apply to the correction of Punchlist Items (it being agreed that the Government's remedies for failure to correct Punchlist Items shall be as provided in Sections 3.5 and 5.7.8).

**9.12. Intentionally Omitted.**

**9.13. Intentionally Omitted.**

**9.14. Effect of Acceptance and Occupancy.** Neither the Government's acceptance of the Leased Premises for occupancy, nor the Government's occupancy thereof, shall be construed as a waiver of any requirement of or right of the Government under this Lease, or as otherwise prejudicing the Government with respect to any such requirement or right.

**9.15. Maintenance of Building and Premises-Right of Entry.** Except in case of damage arising out of the willful act or negligence of a Government employee, Lessor shall maintain the Leased Premises, including the building, building systems, and all equipment, fixtures, and appurtenances furnished by the Lessor under this Lease, in good repair and condition so that they are suitable in appearance and capable of supplying such heat, air conditioning, light, ventilation, safety systems, access and other things to the Leased Premises, without reasonably preventable or recurring disruption, as is required for the Government's access to, occupancy, possession, use and enjoyment of the Leased Premises as provided in this Lease. For the purpose of so maintaining the Leased Premises, the Lessor and, in the event of a Lessor default, the Lessor's Lender, Master Servicer or Special Servicer may at reasonable times enter the Leased Premises with the approval of the authorized Government representative in charge.

**9.16. Failure in Performance.**

(a) **Service Agreement Matters.** Except to the extent expressly set forth herein to the contrary, in the event of any failure by the Lessor to provide any service, utility, maintenance, non-capital repair or non-capital replacement required under this Lease for a period of thirty (30) days following the Lessor's receipt of Notice thereof from the CO or COR, then such failure shall constitute a default by the Lessor under this Lease. In the event of such default, the Government may serve notice on both the Lessor and the Lessor's Lender, its assignees or designees (provided that they have given written Notice of their identity and address to the Government), that the Lessor's continued failure to perform the requirements under this Lease for a period exceeding thirty (30) days after such second Government's Notice, or the Lessor's failure to work with all diligence toward correction of the default, shall confer upon the Government the rights and remedies addressed in the following paragraph. The Government's Notice shall (subject to the approval of an authorized Government representative) immediately entitle the Lessor's Lender or its assigns to enter upon the Leased Premises at reasonable times and take whatever steps are necessary to perform the Lease requirement and cure the Lessor's failure. In the event that Lessor's failure to provide any service, utility, maintenance, non-capital repair or replacement required under this Lease results in an emergency and/or life or health threatening situation, as reasonably and solely determined by the Government, then the notice requirement set forth in this paragraph shall not apply. The Government may then immediately rectify the situation and thereafter be reimbursed for its cost, as set forth herein.

In the event that the Lessor, or Lessor's Lender and/or its assigns, have failed to cure the default by the conclusion of the second thirty (30)-day period, or are not working with all diligence toward the correction of the default during such second thirty (30) day period, the Government may, at its option: (i) by contract or otherwise, perform the requirement and deduct from any payment or payments of Service Agreement Rent under this Lease then or thereafter due, the resulting reasonable cost to the Government, including all administrative costs; provided, further, if the Government elects to correct any such requirement, the Government and each of its contractors shall be entitled to access to any and all areas of the building, access to which is necessary to correct any such requirement, and the Lessor shall afford and facilitate such access. Alternatively, the Government may (ii) deduct from any payments of Service Agreement Rent under this Lease then or thereafter due, an amount which reflects the reasonable value of the Contract requirement not performed; or (iii) terminate all or any portion of the Service Agreement portion of the Lease. In the event that the Government terminates all or any portion of the Service Agreement portion of the Lease, the Government will remain obligated to pay the Base Rent, but Service Agreement Rent will be reduced and services will be furnished as provided in paragraph (c) of this Section. No deduction from Service Agreement Rent pursuant to this Section shall constitute a default by the Government under this Lease. Notwithstanding the foregoing, in the event Lessor fails to cure a default within the second thirty (30) day period described above and the Government remedies such default itself, upon the Government's request, Lessor and its sureties shall immediately reimburse the Government from the funds held in the Service Reserve Account.

(b) **Space Lease Matters.** If, during the Lease Term, any physical element or condition either within or affecting the tenantability of the Leased Premises deteriorates or fails such that a capital repair or replacement is necessary, and if Lessor fails to repair or replace such element(s) or cure or correct the condition after the Government has provided Lessor with reasonable Notice and an opportunity to cure not to exceed sixty (60) days, then such failure shall constitute a default under the Lease. The Government may then serve Notice on both the Lessor and the Lessor's Lender, its assignees or designees (provided that they have given written Notice of their identity and address to the Government), that the Lessor's continued failure to repair or replace the element or cure or correct the condition for a period exceeding sixty (60) days, or an alternative time set by the Contracting Officer in his sole discretion after such second Government Notice, or the Lessor's failure to work with all diligence toward correction of the default, shall confer upon the Government the rights and remedies addressed in the following paragraph. The Government's Notice shall (subject to the approval of an authorized Government representative) immediately entitle the Lessor's Lender or its assigns to enter upon the Leased Premises and take whatever steps are necessary to cure the Lessor's default.

In the event that the Lessor, or Lessor's Lender and its assigns, have failed to cure the default by the conclusion of the second sixty (60) day (or shorter) period, or are not working with all diligence toward correction of the default during such second sixty (60) day (or shorter) period, the Government may, by contract or otherwise, repair or replace the element(s) or cure or correct the condition and deduct the resulting reasonable cost to the Government, including all administrative costs, from any payment or payments of the Service Agreement Rent under this Lease; provided, further, if the Government elects to perform any such requirement, the Government and each of its Contractors shall be entitled to access to any and all areas of the building, access to which is necessary to remedy the condition, and the

Lessor shall afford and facilitate such access. No deduction from Service Agreement Rent pursuant to this Section shall constitute a default by the Government under this Lease. Notwithstanding the foregoing, in the event Lessor fails to cure a default within the second sixty (60) day period described above and the Government remedies such default itself, upon the Government's request, Lessor and its sureties shall immediately reimburse the Government from the funds held in the Service Reserve Account.

(c) If a default under the Service Agreement or Space Lease continues beyond the cure period established by the Government through Notice to the Lessor and the Lessor's Lender as specified in paragraphs (a) or (b) of this Section above, or upon repeated and unexcused failure by the Lessor to comply with one or more of the maintenance, service or operating requirements of this Lease, then the Government may, by Notice to Lessor and the Lessor's Lender, its assignees or designees (provided they have given written Notice of their identity and address to the Government): (i) excise from the Lease the service or utility which is the subject of the default and make an adjustment to the Service Agreement Rent under the Changes clause (in no event shall such reduction exceed the Service Agreement Rent) or (ii) terminate the Service Agreement component of this Lease for default and if so terminated, the Government will be entitled to collect from the Lessor's Lender, any Master Servicer, Special Servicer or Trustee all Service Agreement Rent paid to Lessor but not yet disbursed for the payment of Operating Expenses or not yet earned for management fees. The Government will then arrange for the provision of all services, maintenance and operations as identified in the Service Agreement portion of the Lease. If the Government elects to terminate the Service Agreement portion of this Lease under this Section, the Government may direct the Lessor to assign its interests with respect to any contract for supplies or services for the Leased Premises to the Government, until such time as the Government can procure suppliers and subcontractors under its own contracting authority. The Lessor hereby agrees to execute and furnish to the Government such assignment and novation agreements as the Government shall require should the Government elect to continue with any existing Contract for supplies and services.

#### **9.17. Fire and Casualty Damage.**

(a) If the entire Leased Premises are damaged or destroyed by fire or other casualty the Government shall have the right to terminate this Lease by written Notice to Lessor as soon as practicable within sixty (60) days after the occurrence of such event. In the event that the Government fails to provide the foregoing written Notice of its desire to terminate this Lease, then the Lessor shall commence repair and restoration in accordance with paragraph (b) below of this Section; it being understood that all references to partial damage or destruction in paragraphs (b) and (c) below shall be deemed to mean damage or destruction for purposes of this paragraph (a).

(b) If the Leased Premises are partially damaged or destroyed by fire or other casualty such that all, substantially all, or a part of the Leased Premises are rendered unrentable, inaccessible or unusable, as determined by the Government in its reasonable discretion, and repair or restoration of such damage or destruction cannot reasonably be completed within three hundred sixty-five (365) days of such fire or other casualty (as determined by the Government in its reasonable discretion), the Government shall have the right to terminate

this Lease by written Notice to Lessor as soon as practicable within sixty (60) days after the occurrence of such event.

(c) If the Leased Premises are partially damaged or destroyed by fire or other casualty such that all, substantially all, or a part of the Leased Premises are rendered unrentable, inaccessible or unusable, as determined by the Government in its reasonable discretion, and the Government is not entitled or waives its right to terminate pursuant to paragraph (b) above, then: (i) the Lessor shall, as soon as practicable, diligently commence and complete repair or restoration of the Leased Premises (including all Fit-Out), but in all events such repair or restoration shall be completed within three hundred sixty-five (365) days of such fire or other casualty (provided, that, if such repair or restoration cannot be completed within such three hundred sixty-five (365)-day period with diligent commencement and continuous pursuit of such repair or restoration, the Government and the Lessor shall agree, in writing, on a reasonable extension of such time period); (ii) the Rent shall, from and after the date of such partial damage or destruction, be proportionately abated, as determined by the Government in its reasonable discretion, during the period that such part of the Leased Premises are untenable, inaccessible or unusable, until such repair or restoration is entirely completed and such part of the Leased Premises are reoccupied by the Government; (iii) the Government shall reoccupy such part of the Leased Premises upon completion of such repair or restoration; and (iv) the Government will have no right to terminate this Lease as a result of such partial damage or destruction so long as the Lessor diligently commences and continuously pursues such repair or restoration until entirely completed within such 365-day period (or such longer period as the Government and the Lessor have agreed in writing). If the Lessor fails to diligently commence and pursue completion of such repair or restoration, or if such repair or restoration is not Substantially Completed within such 365-day period (or such longer period as is agreed in writing by the Government and the Lessor), the Government shall have the right to terminate this Lease by written Notice to the Lessor. Solely for the purpose of determining the proportion of Rent that shall be abated during such period of untenability, any part of the Leased Premises that has not been rendered untenable by such partial destruction or damage but the use of which by the Government is substantially related to and dependent upon the availability of such part of the Leased Premises that has been rendered untenable by such partial destruction or damage shall be deemed to have been rendered untenable for such period of untenability.

(d) As soon as practicable after partial destruction of or damage to the Leased Premises, or after substantial destruction of or damage to the entire Leased Premises for which the Government has not elected to terminate the Lease pursuant to paragraph (a) or (b) of this Section, but in no event more than sixty (60) days thereafter, the Lessor shall provide the Government with a schedule and plans for accomplishing the repair or restoration. The Government will have the right to review and approve such schedule and plans for such repair or restoration of the Leased Premises, with the Government's approval not to be unreasonably withheld, conditioned or delayed.

(e) It shall be the sole responsibility of the Lessor to provide such fire and casualty and business/rent interruption insurance as may be necessary to ensure that the Leased Premises, including, without limitation, all Fit-Out and any structural or other alterations, decorations, additions or improvements in or to the Leased Premises, can be reconstructed in the event of their destruction to substantially the same condition they were prior to such damage. Failure



on the part of the Lessor to provide for sufficient amounts of such insurance will be grounds for the Government terminating the Lease in the event of damage to or destruction of the Leased Premises by fire or other casualty. Notwithstanding the foregoing, the Government will insure, or self-insure, any alterations, decorations, additions or improvements, as well as all Government Equipment, made to or placed in the Leased Premises by the Government, excluding the tenant Fit-Out.

(f) Notwithstanding the foregoing or anything herein to the contrary, if the Leased Premises are substantially damaged or destroyed by fire or other casualty during the last five (5) years of the Lease Term and the Leased Premises cannot reasonably be reconstructed within three hundred sixty-five (365) days after the date of such damage or destruction, then this Lease will immediately terminate and neither party to this Lease shall thereafter have any obligation under this Lease except obligations which accrued and were not paid prior to such damage or destruction.

(g) If this Lease is terminated pursuant to this Section 9.17, the Lessor shall pay to the Government the then-unamortized amount (based on straight-line depreciation over the Initial Term) of the excess of the total cost of all Fit-Out (net of any portion of such cost which is amortized into the Base Rent pursuant to Section 2.5.1) above the Fit-Out Allowance; provided that, the amount payable pursuant to this Section 9.17(g) will not exceed the actual insurance proceeds paid with respect to the Fit-Out (allocating any deductible between the Base Building and the Fit-Out, on a pro-rata basis based on their respective replacement values), or which would have been paid if Lessor had maintained the insurance required to be maintained by Lessor pursuant to Section 2.13.

**9.18. Compliance with Applicable Law.** Lessor shall comply with all Federal, state and local laws applicable to the Lessor as owner or lessor, or both, of the Buildings or Leased Premises, including, without limitation, laws applicable to the construction, ownership, alteration or operation of both or either thereof, and will obtain all necessary permits, licenses and similar items at Lessor's expense. The Government will comply with all Federal, state and local laws applicable to and enforceable against it as a tenant under this Lease; provided that nothing in this Lease shall be construed as a waiver of any sovereign immunity of the Government. This Lease shall be governed by Federal law. Any requirements in this Lease that Lessor cause the Facility to comply with applicable building or other codes or laws shall not apply to any alterations made to the Facility (excluding Fit-Out or changes to the Base Building prior to final completion) by the Government or at the Government's request and expense (collectively, the "Government Alterations"), or to any violation resulting directly or indirectly from such Government Alterations. Further, the Government acknowledges that such Government Alterations may result in requirements or orders to make corrections or alterations to the Facility which are not otherwise then required to bring the Facility or a portion thereof into compliance with current building codes and/or other governmental requirements (the "Consequential Alterations"). Notwithstanding anything to the contrary in this Section 9.18 or elsewhere in this Lease, the Government shall be solely responsible for any such noncompliance proximately caused by the Government Alterations and shall pay for any such Consequential Alterations (including associated design and other actual, direct costs thereof).

**9.19. Alterations.** The Government shall have the right during the existence of this Lease to make alterations, attach fixtures, and erect structures or signs in or upon the Leased Premises hereby leased, which fixtures, additions or structures so placed in, on, upon, or attached to the

said Leased Premises shall be and remain the property of the Government and may be removed or otherwise disposed of by the Government. If the Lease contemplates that the Government is the sole occupant of the Building, for purposes of this Section, the Leased Premises include the land on which the Building is sited and the Building itself. Otherwise, the Government will have the right to tie into or make any physical connection with any structure located on the property as is reasonably necessary for appropriate utilization of the Leased Space.

#### **9.20. Inspection/Right of Entry.**

(a) At any time and from time to time after Lease Award and during the term, the agents, employees and contractors of the Government may, upon reasonable prior Notice to Offeror or Lessor, enter upon the offered premises or Leased Premises, and all other areas of the Building, access to which is necessary to accomplish the purposes of entry, to determine the potential or actual compliance by the Offeror or Lessor with the requirements of the Solicitation or this Lease, which purposes shall include, but not be limited to: (1) inspecting, sampling and analyzing of suspected asbestos-containing materials and air monitoring for asbestos fibers; (2) inspecting the heating, ventilation and air conditioning system, maintenance records, and mechanical rooms for the offered premises or the Leased Premises; (3) inspecting for any leaks, spills, or other potentially hazardous conditions which may involve tenant exposure to hazardous or toxic substances; and (4) inspecting for any current or past hazardous waste operations, to ensure that appropriate mitigative actions were taken to alleviate any environmentally unsound activities in accordance with Federal, state and local law.

(b) Nothing in this Section shall be construed to create a Government duty to inspect for toxic materials or to impose a higher standard of care on the Government than on other lessees. The purpose of this Section is to promote the ease with which the Government may inspect the Building. Nothing in this Section shall act to relieve the Lessor of any duty to inspect or liability which might arise as a result of Lessor's failure to inspect for or correct a hazardous condition.

#### **9.21. Covenants Against Contingent Fees.**

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this Contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to terminate this Contract without liability or, in its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) "Bona fide agency," as used in this Section, means an established commercial or selling agency (including licensed real estate agents or brokers), maintained by a Contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Bona fide employee," as used in this Section, means a person, employed by a Contractor and subject to the Contractor's supervision and control as to time, place, and

manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

“Contingent fee,” as used in this Section, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

“Improper influence,” as used in this Section, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

## **9.22. Anti-Kickback Procedures.**

### **(a) Definitions.**

“Kickback,” as used in this Section, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any Prime Contractor, Prime Contractor Employee, Subcontractor, or Subcontractor Employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a Prime Contract or in connection with a Subcontract relating to a Prime Contract.

“Person,” as used herein, means a corporation, partnership, limited liability company, business association of any kind, trust, joint-stock company, or individual.

“Prime Contract,” as used in this Section, means a contract or contractual action entered into by the Government for the purpose of obtaining supplies, materials, equipment, or services of any kind.

“Prime Contractor,” as used in this Section, means a person who has entered into a Prime Contract with the United States.

“Prime Contractor Employee,” as used in this Section, means any officer, partner, employee, or agent of a Prime Contractor.

“Subcontract,” as used in this Section, means a contract or contractual action entered into by a Prime Contractor or Subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a Prime Contract.

“Subcontractor,” as used in this Section, (i) means any person, other than the Prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a Prime Contract or a Subcontract entered into in connection with such Prime Contract, and (ii) includes any person who offers to furnish or furnishes general supplies to the Prime Contractor or a higher tier Subcontractor.

“Subcontractor Employee,” as used in this Section, means any officer, partner, employee, or agent of a Subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the "Act"), prohibits any person from--

- (1) Providing or attempting to provide or offering to provide any kickback;
- (2) Soliciting, accepting, or attempting to accept any kickback; or
- (3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a Prime Contractor to the United States or in the contract price charged by a Subcontractor to a Prime Contractor or higher tier Subcontractor.

(c) (1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this Section in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this Section may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this Section.

(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime Contract or (ii) direct that the Prime Contractor withhold from sums owed a Subcontractor under the Prime Contract, the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this Section be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this Section. In the either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

(5) The Contractor agrees to incorporate the substance of this Section, including subparagraph (c)(5) but excepting subparagraph (c)(1), in all Subcontracts under this Contract which exceed \$100,000.

**9.23. Intentionally Omitted.**

**9.24. Price Adjustment for Illegal or Improper Activity.**

(a) If the head of the contracting activity (HCA) or his or her designee determines that there was a violation of subsection 27(a) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in the Federal Acquisition Regulation, the Government, at its election, may (i) reduce the monthly Rent under this Lease by 5% of the amount of the Rent for each month of the remaining term of the Lease, including any option periods, recover 5% of the Rent already paid, and/or draw on the Service

Reserve Account for an amount of up to 5% of the Rent already paid; (ii) reduce payments for alterations not included in monthly Rent payments by 5% of the amount of the alterations agreement; or (iii) reduce the payments for violations by a Lessor's subcontractor by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was placed.

(b) Prior to making a determination as set forth above, the HCA or designee shall provide to the Lessor a written Notice of the action being considered and the basis therefor. The Lessor shall have a period determined by the HCA or designee, but not less than thirty (30) calendar days after receipt of such Notice, to submit in person, in writing, or through a representative, information and argument in opposition to the proposed reduction. The HCA or designee may, upon good cause shown, determine to deduct less than the above amounts from payments.

(c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this Lease.

#### **9.25. Price Reduction for Defective Cost or Pricing Data.**

(a) If any price, including profit or fee, negotiated in connection with this Lease, or any cost reimbursable under this Lease, was increased by any significant amount because (i) the Lessor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in a Certificate of Current Cost or Pricing Data, (ii) a subcontractor or prospective subcontractor furnished the Lessor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (iii) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and this Lease shall be modified to reflect the reduction.

(b) Any reduction under paragraph (a) of this Section due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (i) the actual subcontract or (ii) the actual cost to the Lessor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Lessor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

(c) (1) If the Contracting Officer determines under paragraph (a) of this Section that a price or cost reduction should be made, the Lessor agrees not to raise the following matters as a defense:

(i) The Lessor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Lessor or subcontractor took

no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Lessor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2) (i) Except as prohibited by subdivision (c)(2)(ii) of this Section, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a reduction if--

(A) The Lessor certifies to the Contracting Officer that, to the best of the Lessor's knowledge and belief, the Lessor is entitled to the offset in the amount requested; and

(B) The Lessor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.

(ii) An offset shall not be allowed if-

(A) The understated data was known by the Lessor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or

(B) The Government proves that the facts demonstrate that the cost or price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.

(d) If any reduction in a cost or price under this Section reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Lessor shall be liable to and shall pay the Government at the time such overpayment is repaid--

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Lessor to the date the Government is repaid by the Lessor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Lessor or subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent.

## **9.26. Proposals for Adjustment.**

(a) The Contracting Officer may, from time to time during the term of this Lease, require changes to be made in the work or services to be performed and in the terms or conditions of this Lease. Such changes will be required under Section 9.27.

(b) If the Contracting Officer makes a change within the general scope of the Lease, the Lessor shall submit, in a timely manner, an itemized cost proposal for the work to be accomplished or services to be performed when the cost exceeds \$100,000. The proposal, including all subcontractor work, will contain at least the following details--

- (1) Material quantities and unit costs;
- (2) Labor costs (identified with specific item or material to be placed or operation to be performed);
- (3) Equipment costs;
- (4) Worker's compensation and public liability insurance;
- (5) Overhead;
- (6) Profit; and
- (7) Employment taxes under FICA and FUTA.

(c) The following Federal Acquisition Regulation (FAR) provisions also apply to all proposals exceeding \$500,000 in cost--

- (1) The Lessor shall provide cost or pricing data including subcontractor cost or pricing data (48 CFR 15.403-4); and
- (2) The Lessor's representative, all contractors, and subcontractors whose portion of the work exceeds \$500,000 must sign and return the "Certificate of Current Cost or Pricing Data" (48 CFR 15.406-2).

(d) Lessor shall also refer to 48 CFR Part 31, Contract Cost Principles, for information on which costs are allowable, reasonable, and allocable in Government work.

## **9.27. Changes.**

(a) The Contracting Officer may at any time, by written order, make changes within the general scope of this Lease in any one or more of the following:

- (1) Specifications (including drawings and designs);
- (2) Work or services;

- (3) Facilities or space layout; or
- (4) Amount of space (with the consent of the Lessor).

(b) If any such change causes an increase or decrease in Lessor's cost of or the time required for performance under this Lease, whether or not changed by the order, the Contracting Officer will modify this Lease to provide for one or more of the following:

- (1) A modification of the delivery date;
- (2) An equitable adjustment in the Rent rate;
- (3) A lump sum equitable adjustment; or
- (4) An equitable adjustment of the annual operating costs per square foot of Usable Area specified in this Lease.

(c) The Lessor shall assert its right to an adjustment under this Section within thirty (30) days from the date of receipt of the change order and shall submit a proposal for adjustment. Failure to agree to any adjustment shall be a dispute under Section 9.29. However, nothing in this Section shall excuse the Lessor from proceeding with the change as directed.

(d) Absent such written change order, the Government will not be liable to Lessor under this Section.

**9.28. Examination of Records by GSA.** The Lessor agrees that the Administrator of General Services, or any duly authorized representative shall, until the expiration of three (3) years after final payment under this Lease, or of the time periods for the particular records specified in Subpart 4.7 of the Federal Acquisition Regulation (48 CFR 4.7), whichever expires earlier, have access to and the right to examine any books, documents, papers, and records of the Lessor involving transactions related to this Lease or compliance with any clauses thereunder. The Lessor further agrees to include in all its subcontracts hereunder a provision to the effect that the subcontractor agrees that the Administrator of General Services, or any duly authorized representatives shall, until the expiration of three (3) years after final payment under the subcontract, or of the time periods for the particular records specified in Subpart 4.7 of the Federal Acquisition Regulation (48 CFR 4.7), whichever expires earlier, have access to and the right to examine any books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract or compliance with any clauses thereunder. The term "subcontract" as used in this Section excludes (i) purchase orders not exceeding \$100,000 and (ii) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

**9.29. Disputes.**

(a) This Lease is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613) (referred to in this Section as the "Act").



(b) Except as provided in the Act, all disputes arising under or relating to this Lease shall be resolved under this Section.

(c) "Claim," as used in this Section, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this Lease. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Lessor seeking the payment of money exceeding One Hundred Thousand Dollars (\$100,000) is not a claim under the Act until certified as required by subparagraph (d)(2) of this Section. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this Section, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d) (1) A claim by the Lessor shall be made in writing and, unless otherwise stated in this Lease, submitted within six (6) years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Lessor shall be subject to a written decision by the Contracting Officer.

(2) (i) Lessor shall provide the certification specified in subparagraph (d)(2)(iii) of this Section when submitting any claim Exceeding One Hundred Thousand Dollars (\$100,000).

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Lessor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Lessor."

(3) The certification may be executed by any person duly authorized to bind the Lessor with respect to the claim.

(e) For Lessor claims of One Hundred Thousand Dollars (\$100,000) or less, the Contracting Officer must, if requested in writing by the Lessor, render a decision within sixty (60) days of the request. For Lessor-certified claims over One Hundred Thousand Dollars (\$100,000), the Contracting Officer must, within sixty (60) days, decide the claim or notify the Lessor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Lessor appeals or files a suit as provided in the Act.

(g) If the claim by the Lessor is submitted to the Contracting Officer or a claim by the Government is presented to the Lessor, the parties, by mutual consent, may agree to use ADR. If the Lessor refuses an offer for ADR, the Lessor shall inform the Contracting Officer, in writing of the Lessor's specific reasons for rejecting the offer. When using arbitration conducted pursuant to 5 U.S.C. 575-580, or when using any other ADR technique mutually agreed upon by the Government and the Lessor to handle a claim in accordance with the ADRA, the claim, regardless of amount, shall be accompanied by the certification described in subparagraph (d)(2)(iii) of this Section, and executed in accordance with subparagraph (d)(3) of this Section.

(h) The Government will pay interest on the amount found due and unpaid from (i) the date that the Contracting Officer receives the claim (certified if required); or (ii) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Lessor shall proceed diligently with performance of this Lease pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

**9.30. Intentionally Deleted.**

**9.31. Equal Opportunity.**

(a) If, during any twelve (12) month period (including the twelve (12) months preceding Lease Award), the Lessor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of Ten Thousand Dollars (\$10,000), the Lessor shall comply with subparagraphs (b)(1) through (11) below. Upon request, the Lessor shall provide information necessary to determine the applicability of this Section.

(b) In performing this Lease, the Lessor agrees as follows:

(1) The Lessor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Lessor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(2) The Lessor shall take affirmative action to ensure the applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be

limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.

(3) The Lessor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this Section.

(4) The Lessor shall, in all solicitations or advertisements for employees placed by or on behalf of the Lessor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) The Lessor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer, advising the labor union or workers' representative of the Lessor's commitments under this Section, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Lessor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Lessor shall furnish to the Contracting Officer all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Lessor has filed within the 12 months preceding the date of contract award, the Lessor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(8) The Lessor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records) and other material that may be relevant to the matter under investigation and pertinent to compliance with the applicable rules, regulations, and orders, including Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(9) If the OFCCP determines that the Lessor is not in compliance with this Section or any rule, regulation, or order of the Secretary of Labor, the Lessor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended, and the Government will be entitled to an offset Rent and/or the Service Reserve Account. In addition, subject

to the terms and conditions of this Lease, sanctions may be imposed and remedies invoked against the Lessor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

(10) The Lessor shall include the terms and conditions of subparagraph (b)(1) through subparagraph (11) of this Section in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Lessor shall take such action with respect to any subcontract or purchase order as the Contracting Officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the Lessor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Lessor may request the United States to enter into the litigation to protect the interests of the United States.

(c) Notwithstanding any other clause in this Lease, disputes relative to this Section will be governed by the procedures in 41 CFR 60-1.1.

**9.32. Affirmative Action for Disabled and Veterans of the Vietnam Era.**

**(a) Definitions.**

“Appropriate office of the state employment service system,” as used in this Section, means the local office of the Federal-state national system of public employment offices with assigned responsibility for serving the area where the employment opening is to be filled, including the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

“Positions that will be filled from within the Lessor’s organization,” as used in this Section, means employment openings for which no consideration will be given to persons outside the Lessor’s organization (including any Affiliates, subsidiaries, and the parent companies) and includes any openings that the Lessor proposes to fill from regularly established “recall” lists.

“Employment openings,” as used in this Section, includes full-time employment, temporary employment of over three (3) days, and part-time employment, but does not include (i) executive and top management positions, (ii) positions that will be filled from within the Lessor’s organization or under a customary and traditional employer-union hiring arrangement, or (iii) openings in an educational institution that are restricted to students of that institution.

“Veteran of the Vietnam era” means a person who—

Served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released therefrom with other than a dishonorable discharge; or

Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964, and May 7, 1975.

(b) **General.**

(1) Regarding any position for which the employee or applicant for employment is qualified, the Lessor shall not discriminate against the individual because the individual is a disabled veteran or veteran of the Vietnam era. The Lessor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans' status in all employment practices such as (i) employment, (ii) upgrading, (iii) demotion or transfer, (iv) recruitment, (v) advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.

(2) The Lessor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (as used in this Section, the "Act"), as amended.

(c) **Listing openings.**

(1) The Lessor agrees to list all employment openings existing at Lease Award or occurring during contract performance, at an appropriate office of the state employment service system in the locality where the opening occurs. These openings include those occurring at any Lessor facility, including ones not connected with performing this Lease. An independent corporate affiliate is exempt from this requirement.

(2) State and local government agencies holding Federal contracts of Ten Thousand Dollars (\$10,000) or more shall also list all their openings with the appropriate office of the state employment service.

(3) The listing of employment openings with the state employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Lessor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

(4) Whenever the Lessor becomes contractually bound to the listing terms of this Section, it shall advise the state employment service system, in each state where it has establishments, of the name and location of each hiring location in the state. As long as the Lessor is contractually bound to these terms and has so advised the state system, it need not advise the state system of subsequent contracts. The Lessor may advise the state system when it is no longer bound by this Lease Section.

(d) **Applicability.**

(1) This Section does not apply to the listing of employment openings which occur and are filled outside the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(2) The terms of paragraph (c) above of this Section do not apply to openings that the Lessor proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of its own organization or employer-union arrangement for that opening.

(e) **Postings.**

(1) The Lessor agrees to post employment notices stating (i) the Lessor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era, and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor (Director), and provided by or through the Contracting Officer.

(3) The Lessor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Lessor is bound by the terms of the Act, and is committed to take affirmative action to employ, and advance in employment, qualified disabled veterans and veterans of the Vietnam era.

(f) **Noncompliance.** If the Lessor does not comply with the requirements of this Section, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(g) **Subcontracts.** The Lessor shall include the terms of this Section in every subcontract or purchase order of Ten Thousand Dollars (\$10,000) or more unless exempted by rules, regulations, or orders of the Secretary. The Lessor shall act as specified by the Director to enforce the terms, including action for noncompliance.

### **9.33. Affirmative Action for Workers with Disabilities.**

#### **(a) General.**

(1) Regarding any position for which the employee or applicant for employment is qualified, the Lessor shall not discriminate against any employee or applicant because of physical or mental disability. The Lessor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental disability in all employment practices such as--

- (i) Recruitment, advertising, and job application procedures;
- (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
- (iii) Rates of pay or any other form of compensation and changes in compensation;
- (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
- (v) Leaves of absence, sick leave, or any other leave;
- (vi) Fringe benefits available by virtue of employment; whether or not administered by the Lessor;
- (vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
- (viii) Activities sponsored by the Lessor, including social and recreational programs; and
- (ix) Any other term, condition, or privilege of employment.

(2) The Lessor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 USC 793) (referred to this Section as the "Act"), as amended.

#### **(b) Postings.**

(1) The Lessor agrees to post employment notices stating (i) the Lessor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Lessor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Lessor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary), and shall be provided by or through the Contracting Officer.

(3) The Lessor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Lessor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.

(c) **Noncompliance.** If the Lessor does not comply with the requirements of this Section, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(d) **Subcontracts.** The Lessor shall include the terms of this Section in every subcontract or purchase order in excess of Two Thousand Five Hundred Dollars (\$2,500) unless exempted by rules, regulations, or orders of the Secretary. The Lessor shall act as specified by the Director to enforce the terms, including action for noncompliance.

#### **9.34. Employment Reports on Disabled Veterans and Veterans of the Vietnam Era.**

(a) Unless the Lessor is a state or local government agency, the Lessor shall report at least annually, as required by the Secretary of Labor, on:

(1) The number of disabled veterans and the number of veterans of the Vietnam era in the workforce of the Lessor by job category and hiring location; and

(2) The total number of new employees hired during the period covered by the report, and of that total, the number of disabled veterans, and the number of veterans of the Vietnam era.

(b) The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS-100."

(c) Reports shall be submitted no later than September 30 of each year beginning September 30, 2001.

(d) The employment activity report required by paragraph (a)(2) of this Section shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this Section. Lessor may select an ending date: (1) As of the end of any pay period during the period January



through March 1 of the year the report is due, or (2) as of December 31, if the Lessor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(e) The count of veterans reported according to paragraph (a) of this Section shall be based on voluntary disclosure. Each contractor subject to the reporting requirements at 38 U.S.C. 4212(d) shall invite all special disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Lessor. The invitation shall state that the information is voluntarily provided, that the information will be kept confidential, that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment, and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.

(f) The Lessor shall include the terms of this Section in every subcontract or purchase order of Ten Thousand Dollars (\$10,000) or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

**9.35. Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment.**

(a) The Government suspends or debar contractors to protect the Government's interests. Contractors shall not enter into any subcontract in excess of the simplified acquisition threshold at FAR 13.000 with a contractor that has been debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

(b) The Lessor shall require each proposed first-tier subcontractor, whose subcontract will exceed the small purchase limitation at FAR 13.000, to disclose to the Lessor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(c) A corporate officer or designee of the Lessor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended or proposed for debarment (See FAR 9.404 for information on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs). The notice must include the following:

(1) The name of the subcontractor,

(2) The Lessor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs;

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs;

(4) The systems and procedures the Lessor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

**9.36. Subcontractor Cost or Pricing Data.**

(a) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, which ever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, the Lessor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1 applies.

(b) The Lessor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this Section were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(c) In each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4, when entered into, the Lessor shall insert either--

(1) The substance of this Section, including this paragraph (c), if paragraph (a) of this Section requires submission of cost or pricing data for the subcontract; or

(2) The substance of the clause at FAR 52.215-13, Subcontractor Cost or Pricing Data--Modifications.

**9.37. Utilization of Small Business Concerns.**

(a) It is the policy of the United States that small business concerns, HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns owned and controlled by veterans or service-disabled veterans, and small business concerns owned and controlled by women shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime Contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-

owned small business concerns, HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.

(b) The Lessor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient Lease performance. The Lessor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Lessor's compliance with this Section.

(c) Definitions. As used in this Section of the Lease--

(1) "Small business concern" means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

(2) "HUBZone small business concern" means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

(3) "Small business concern owned and controlled by socially and economically disadvantaged individuals" and "small disadvantaged business concern" mean a small business concern that represents, as part of its offer that--

(i) It has received certification as a small disadvantaged business concern consistent with 13 CFR 124, Subpart B;

(ii) No material change in disadvantaged ownership and control has occurred since its certification;

(iii) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(iv) It is identified, on the date of its representation, as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net).

(4) "Small business concern owned and controlled by women" means a small business concern--

(i) Which is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(ii) Whose management and daily business operations are controlled by one or more women.

(5) “Small business concern owned and controlled by veterans or service disabled verterans” means a small business concern--

(i) Which is at least 51 percent owned by one or more veterans or service-disabled veterans, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more veterans or service-disabled veterans; and

(ii) Whose management and daily business operations are controlled by one or more veterans or service-disabled veterans.

(d) Lessor acting in good faith may rely on written representations by its subcontractors regarding their status as a small business concern, a HUBZone small business concern, a small business concern owned and controlled by socially and economically disadvantaged individuals, a small business concern owned and controlled by veterans or service disabled verterans, or a small business concern owned and controlled by women.

**9.38. Small Business Subcontracting Plan.**

(a) This clause does not apply to small business concerns.

(b) Definitions. As used in this clause--

(1) “Commercial item” means a product or service that satisfies the definition of commercial item in Section 2.101 of the Federal Acquisition Regulation.

(2) “Commercial Plan” means a subcontracting plan (including goals) that covers the Lessor’s fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).

(3) “Individual contract plan” means a subcontracting plan that covers the entire Lease period (including the Extension Term), applies to a specific Lease, and has goals that are based on the Lessor’s planned subcontracting in support of the specific Lease, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the Lease.

(4) “Master plan” means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

(5) “Subcontract,” means any agreement (other than one involving an employer- employee relationship) entered into by a Federal Government prime contractor or subcontractor calling for supplies or services required for performance of the Lease or subcontract.

(c) The Lessor, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, which separately addresses subcontracting with small business, HUBZone small business concerns, small disadvantaged business, and women-owned small business concerns. If the Lessor is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic Lease and separate parts for each option (if any), the plan shall be included in and made a part of the resultant Lease. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the Lessor ineligible for Award of the Lease.

(d) The Lessor's subcontracting plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The Lessor shall include all subcontracts that contribute to Lease performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.

(2) A statement of--

(i) Total dollars planned to be subcontracted for an individual contract plan; or the Lessor's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a Commercial Plan;

(ii) Total dollars planned to be subcontracted to small business concerns;

(iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;

(iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business concerns;

(v) Total dollars planned to be subcontracted to HUBZone small business concerns;

(vi) Total dollars planned to be subcontracted to small disadvantaged business concerns; and

(vii) Total dollars planned to be subcontracted to women-owned small business concerns.

- (3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to (i) small business concerns, (ii) veteran-owned small business concerns, (iii) service-disabled veteran-owned small business concerns, (iv) HUBZone small business concerns, (v) small disadvantaged business concerns and (vi) women-owned small business concerns.
- (4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this Section.
- (5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Procurement Marketing and Access Network (PRO-Net) of the Small Business Administration (SBA), the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in PRO-Net as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone, small disadvantaged and women-owned small business source list. Use of PRO-Net as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.
- (6) A statement as to whether or not the Lessor included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with (i) small business concerns, (ii) veteran-owned small business concerns, (iii) service-disabled veteran-owned small business concerns, (iv) HUBZone small business concerns, (v) small disadvantaged business concerns, and (vi) women-owned small business concerns.
- (7) The name of the individual employed by the Lessor who will administer the Lessor's subcontracting program, and a description of the duties of the individual.
- (8) A description of the efforts the Lessor will make to assure that small business, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business, small disadvantaged and women-owned small business concerns have an equitable opportunity to compete for subcontracts.
- (9) Assurances that the Lessor will include the Section in this Lease entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the Lessor will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$500,000

(\$1,000,000 for construction of any public facility) to adopt a subcontracting plan that complies with the requirements of this Section.

(10) Assurances that the Lessor will-- (i) cooperate in any studies or surveys as may be required, (ii) submit periodic reports so that the Government can determine the extent of compliance by the Lessor with the subcontracting plan, (iii) submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, in accordance with the instructions on the forms and in paragraph (j) of this Section, and (iv) ensure that its subcontractors agree to submit Standard Forms 294 and 295.

(11) A recitation of the types of records the Lessor will maintain concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the Lessor's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women- owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant- wide or company- wide basis, unless otherwise indicated):

(i) Source lists (e.g., PRO-Net), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged and women- owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged or women- owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating (A) whether small business concerns were solicited and if not, why not, (B) whether veteran-owned small business concerns were solicited and if not, why not, (C) whether service-disabled veteran-owned small business concerns were solicited and if not, why not, (D) whether HUBZone small business concerns were solicited and if not, why not, (E) whether small disadvantaged business concerns were solicited and if not, why not, (F) whether women- owned small business concerns were solicited and if not, why not, and (G) if applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact (A) trade associations, (B) business development organizations, and (C) conferences and trade fairs to locate small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women- owned small business sources.

- (v) Records of internal guidance and encouragement provided to buyers through (A) workshops, seminars, training, etc., and (B) monitoring performance to evaluate compliance with the program's requirements.
  - (vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having Commercial Plans need not comply with this requirement.
- (e) In order to effectively implement this plan to the extent consistent with efficient Lease performance, the Lessor shall perform the following functions:
- (1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged and women- owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Lessor's lists of potential small, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged and women- owned small business subcontractors are excessively long, reasonable efforts shall be made to give all such small business concerns an opportunity to compete over a period of time.
  - (2) Provide adequate and timely consideration of the potentialities of small, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged and women- owned small business concerns in all "make- or- buy" decisions.
  - (3) Counsel and discuss subcontracting opportunities with representatives of small, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged and women- owned small business firms.
  - (4) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Lessor's subcontracting plan.
- (f) A master plan on a plant or division- wide basis that contains all the elements required by paragraph (d) of this Section, except goals, may be incorporated by reference as a part of the subcontracting plan required of the Lessor by this Section; provided, (1) the master plan has been approved, (2) the Lessor ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer, and (3) goals and any deviations from the master



plan deemed necessary by the Contracting Officer to satisfy the requirements of this Lease are set forth in the individual subcontracting plan.

(g) A Commercial Plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The Commercial Plan shall relate to the Lessor's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government Contract. Commercial Plans are also preferred for subcontractors that provide commercial items under a prime contract, whether or not the prime contractor is supplying a commercial item. Notwithstanding anything herein contained to the contrary, Lessor shall utilize the Commercial Plan attached hereto as Schedule 9.38 to meet its obligations under this Section 9.38.

(h) Prior compliance of the Lessor with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the Lease.

(i) The failure of the Lessor or subcontractor to comply in good faith with (1) the Section of this Lease entitled "Utilization of Small Business Concerns," or (2) an approved plan required by this Section, shall be a material breach of the Lease.

(j) The Lessor shall submit the following reports:

(1) Standard Form 294, Subcontracting Report for Individual Contracts. This report shall be submitted to the Contracting Officer semiannually and at Lease completion. The report covers subcontract award data related to this Lease. This report is not required for commercial plans.

(2) Standard Form 295, Summary Subcontract Report. This report encompasses all the contracts with the awarding agency. It must be submitted semi-annually for contracts with the Department of Defense and annually for contracts with civilian agencies. If the reporting activity is covered by a commercial plan, the reporting activity must report annually all subcontract awards under that plan. All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a breakout, in the Lessor's format, of subcontract awards, in whole dollars, to small disadvantaged business concerns by Standard Industrial Classification (SIC) Major Group. For a commercial plan, the Lessor may obtain from each of its subcontractors a predominant SIC Major Group and report all awards to that subcontractor under its predominant SIC Major Group.

### **9.39. Liquidated Damages/Subcontracting Plan.**

(a) Failure to make a good faith effort to comply with the subcontracting plan, as used in this Section, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the Section in this Contract entitled "Small Business Subcontracting Plan," or willful or intentional action to frustrate the plan.

(b) Performance shall be measured by applying the percentage goals to the pro rata share of actual subcontracting dollars attributable to Government contracts covered by the commercial plan. If, at the close of the fiscal year for which the plan is applicable, the Lessor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this Section that the Lessor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with Section 9.38 in this Lease, the Lessor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Lessor's failure to comply, shall be an amount equal to the actual dollar amount by which the Lessor failed to achieve each subcontract goal.

(c) Before the Contracting Officer makes a final decision that the Lessor has failed to make such good faith effort, the Contracting Officer will give the Lessor written Notice specifying the failure and permitting the Lessor to demonstrate what good faith efforts have been made and to discuss the matter. Failure to respond to the Notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Lessor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer will issue a final decision to that effect and require that the Lessor pay the Government liquidated damages as provided in paragraph (b) of this Section.

(d) With respect to commercial products plans; i.e., company-wide or division-wide subcontracting plans approved under paragraph (g) of the Section in this Lease [Section 9.38] entitled "Small Business Subcontracting Plan," the Contracting Officer of the agency that originally approved the plan will exercise the functions of the Contracting Officer under this Section on behalf of all agencies that awarded contracts covered by that commercial products plan.

(e) The Lessor shall have the right of appeal, under the Section in this Contract entitled "Disputes" [Section 9.29] from any final decision of the Contracting Officer.

(f) Liquidated damages shall be in addition to any other remedies that the Government may have, which shall include the right to offset Rent.

**9.40. Restriction on Advertising.** The Lessor shall not refer to this Lease in commercial advertising or similar promotions in such a manner as to state or imply that the product or service provided is endorsed or preferred by the White House, the Executive Office of the President, or any other element of the Federal Government, or is considered by these entities to be superior to other products or services.

**9.41. Prohibition of Segregated Facilities.**

(a) "Segregated facilities," as used in this Section, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color,

religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(b) The Lessor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Lessor agrees that a breach of this Section is a violation of the Equal Opportunity clause in this Contract.

(c) The Contractor shall include this Section in every subcontract and purchase order that is subject to the Equal Opportunity clause of this Contract.

#### **9.42. Audit and Records–Negotiation.**

(a) As used in this Section, “records” includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) Examination of costs. If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable Lease, or any combination of these, the Lessor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this Lease. This right of examination shall include inspection at all reasonable times of the Lessor’s plants, or parts of them, engaged in performing the Lease.

(c) Cost or pricing data. If the Lessor has been required to submit cost or pricing data in connection with any pricing action relating to this Lease, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Lessor’s records, including computations and projections, related to—

- (1) The proposal for the Lease, subcontract, or modification;
- (2) The discussions conducted on the proposal(s), including those related to negotiating;
- (3) Pricing of the Lease, subcontract, or modification; or
- (4) Performance of the Lease, subcontract or modification.

(d) Comptroller General—

- (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Lessor’s

directly pertinent records involving transactions related to this Lease or a subcontract hereunder.

(2) This paragraph may not be construed to require the Lessor or subcontractor to create or maintain any record that the Lessor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) Reports. If the Lessor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer will have the right to examine and audit the supporting records and materials, for the purpose of evaluating—

(1) The effectiveness of the Lessor's policies and procedures to produce data compatible with the objectives of these reports; and

(2) The data reported.

(f) Availability. The Lessor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this Section, for examination, audit, or reproduction, until 3 years after final payment under this Lease or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this Lease. In addition—

(1) If this Lease is completely or partially terminated, the Lessor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and

(2) The Lessor shall make available records relating to appeals under Section 9.29 of this Lease or to litigation or the settlement of claims arising under or relating to this Lease until such appeals, litigation, or claims are finally resolved.

(g) The Lessor shall insert a clause containing all the terms of this Section, including this paragraph (g), in all subcontracts under this Lease that exceed the simplified acquisition threshold, and—

(1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;

(2) For which cost or pricing data are required; or

(3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this Section.

The Section may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government Lease.

#### 9.43. Drug-Free Workplace.

- (a) Definitions. As used in this Section.

Controlled substance” means a controlled substance in schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

“Conviction” means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to deter-mine violations of the Federal or State criminal drug statutes.

“Criminal drug statute” means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

“Drug-free workplace” means the site(s) for the performance of Work done by the Contractor in connection with a specific Contract at which employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

“Employee” means an employee of a Contractor directly engaged in the performance of work under a Government Lease. “Directly engaged” is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in Contract performance.

“Individual” means an offeror/Contractor that has no more than one employee including the offeror/Contractor.

- (b) The Contractor, if other than an individual, shall-- within 30 days after Award (unless a longer period is agreed to in writing):

(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Lessor’s workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish an ongoing drug-free awareness program to inform such employees about-

- (i) The dangers of drug abuse in the workplace;
- (ii) The Lessor’s policy of maintaining a drug-free workplace;
- (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

- (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
- (3) Provide all employees engaged in performance of the Lease with a copy of the statement required by subparagraph (b)(1) of this Section.
- (4) Notify such employees in writing in the statement required by subparagraph (b)(1) of this Section that, as a condition of continued employment on this Lease, the employee will—
- (i) Abide by the terms of the statement; and
- (ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction.
- (5) Notify the Contracting Officer in writing within 10 days after receiving Notice under subdivision (b)(4)(ii) of this Section, from an employee or otherwise receiving actual Notice of such conviction. The Notice shall include the position title of the employee.
- (6) Within 30 days after receiving Notice under subdivision (b)(4)(ii) of this Section of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace—
- (i) Taking appropriate personnel action against such employee, up to and including termination; or
- (ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.
- (7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) through (b)(6) of this Section.
- (c) The Lessor, if an individual, agrees by Lease Award or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this Lease.
- (d) In addition to other remedies available to the Government, the Lessor's failure to comply with the requirements of paragraph (b) or (c) of this Section may, pursuant to FAR 23.506, but as limited by other provisions of this Lease, render the Lessor subject to suspension of Lease payments, termination of the Lease for default, and suspension or debarment.

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